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COMMENTS TO ~~*[scribble]*~~

March 25, 1993

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Janet Taylor

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INTRODUCTION

The Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992") mandates that the Federal Communications Commission ("the Commission") adopt regulations relating to broadcast television stations used predominantly for transmitting sales presentation or program length commercials ("home shopping stations"). Pursuant to this, the Commission now seeks public comment on this issue. Accordingly, the following comments will address our reaction and opinion to the issues raised in FCC 93-35.

To properly adopt the regulations contemplated in section 4(g) of the Cable Act of 1992, it is necessary to clearly define which broadcast stations will be considered to be used predominantly for transmitting sales presentation or program length commercials. We believe that any station devoting more than 50% of their weekly programming to a home shopping format should come within the scope of these proposed regulations. By consistently devoting one half of their time to a format of this nature, the station is establishing a definite desire to focus their programming primarily in the interest of sales. This interest is in sharp contrast to the requirement that broadcasters operate in the public interest, convenience, and necessity. The viewers reliance that broadcasters will be held to this standard in programming must be protected. Stations used primarily for transmitting sales presentation or program length commercials will need to be regulated, therefore, to insure that the viewers interest in receiving public interest programming will be satisfied.

The next issue posed by section 4(g) of the Cable Act of 1992 is how to ascertain whether home shopping networks are serving the public interest, convenience, and necessity. Technically, home shopping broadcast stations have the same obligation as any other broadcaster to serve the public interest, convenience and necessity. The question, however, is raised here because these stations seem to be focusing more on their interest in sales rather than public interest topics. The argument could be made that by providing viewers with this type of entertainment, the stations are in fact serving the public interest. We believe that entertainment was not what the legislature contemplated when they mandated that broadcasters operate in the public interest, convenience and necessity. Finally, section 4(g) seeks to determine whether or not home shopping broadcast stations should be afforded "must-carry" status. In analyzing whether home shopping stations are

operating in the public interest and if they should be afforded “must-carry” status, we will consider three specific factors: A. Viewing of home shopping stations by the public; B. Demands for the spectrum allocated to home shopping stations; and C. Competition between broadcast vs. nonbroadcast home shopping stations.

DISCUSSION

A. Viewing of Home Shopping Stations by the Public

In our opinion, a home shopping broadcast station’s viewer ratings should not be used as the sole rationale in determining whether it’s public interest requirement is properly being served. Mere popularity should not be regarded in any way as synonymous with viewer necessity nor as programming in the public’s best interest. When viewer selection is limited to stations carrying only certain types of programming, viewer popularity ratings will obviously be skewed, perpetuating the imbalanced format. We do not recommend that viewer ratings be completely disregarded, just that they should not be the sole factor in assessing whether home shopping broadcast stations are meeting their public interest obligations. Accordingly, we feel a balance must be struck between the popularity of a program, as evidenced by its ratings, and the necessity of informing the public of current issues affecting their daily lives. We feel, therefore, that broadcast stations allocating 50% or more of their programming week to a home shopping format should be required to run an equivalent amount of localized, public interest programming in order to be eligible for “must carry” status. Without such a requirement, home shopping broadcast stations would receive a competitive advantage by being afforded “must carry” without meeting their public interest obligations like all other local broadcasts stations. This in effect would give the home shopping broadcast stations free advertising at the public’s cost.

B. Demands for the Spectrum Allocated to Home Shopping Stations

We believe that Section 4(g) of the Cable Act of 1992 requires the Commission to consider the demands on the spectrum from all sources seeking “must-carry” status, including land mobile and advanced television. Because there is limited room on the spectrum for broadcasters, it

is all the more imperative that they be held to their public interest obligations. The public, as the owner of the spectrum, has a right to be given programming that is centered around the public interest. If the spectrum were unlimited, there would be no problem with allowing programming that didn't specifically address public interest topics. Because the spectrum is limited, however, the Commission imposes programming obligations on broadcasters to insure that the public interest is protected. Certainly the scarcity of the spectrum is relevant in making the determination whether a home shopping broadcast station is fulfilling its public interest obligation. Based on the limited spectrum, it is reasonable when granting one broadcaster a license to the exclusion of another to impose public interest programming obligations.

Because cable does not operate on the spectrum, they are not restricted like broadcast television by spectrum scarcity. This fact alone, however, should not detract from any cable operator's responsibility to the viewing public. Although there are many more channels available to cable operators than to television broadcasters, the medium is not unlimited. We would argue that a distinct analogy exists between the reasons set forth for regulating broadcasters and the justification for regulating cable operators. Like the scarcity of the spectrum issue that broadcasters face, the number of cable franchises and channels available in any given area are limited. It is reasonable, therefore, to instill some regulations on the cable operators holding these franchises to insure effective competition. Without "must-carry", local broadcasters in some areas will not have a chance to be seen by local viewers.

Presently, home shopping broadcast stations are not fulfilling their public interest obligation. Until this changes, these stations can not be afforded "must carry" status. Future competition for "must-carry" status will certainly become fierce. In our opinion, this competition should be fostered as long as it is targeted toward the public's benefit. We would propose to achieve this goal by awarding potential "must-carry" stations a rating number that reflects in the

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

with monitoring the cable operators and their "must-carry" stations. We would recommend that this numerical calculation be reevaluated at each license renewal period. Any broadcast station that slips below a predetermined threshold during the license period would then be subject to sanctions which may include monetary penalties

It is foreseeable that in some areas a cable operator might only have an obligation to allot three of their channels to "must-carry" stations. If implemented our proposal would require cable operators to fill their "must carry" channels with the stations with the highest public interest

allow the Commission to "tailor fit" each localities "must-carry" selection to the stations that best serve the public interest in that particular area.

C. Competition Between Broadcast vs. Nonbroadcast Home Shopping
Stations

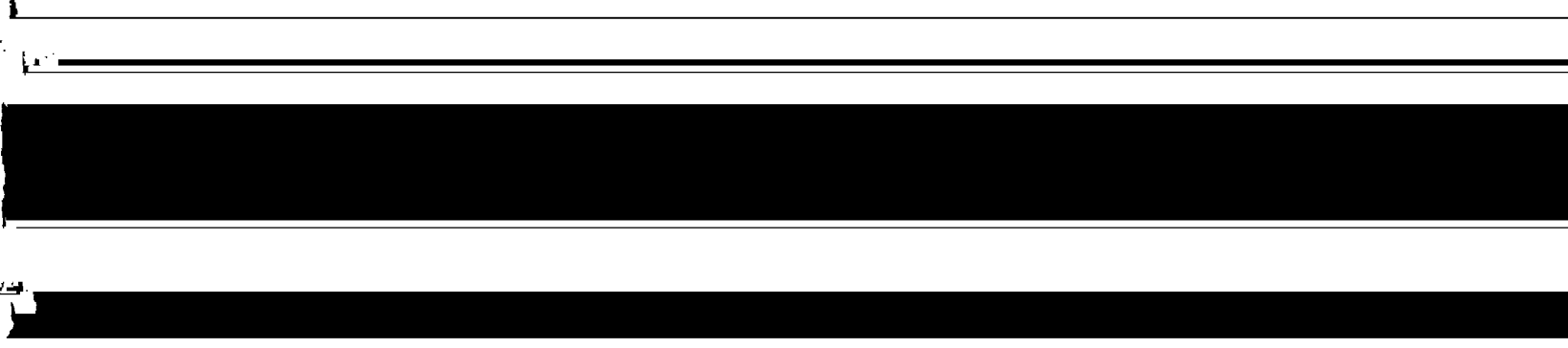
It is in the public interest to provide an environment in the television medium where programming is provided by a diverse group of individuals. That group should include both broadcasters and nonbroadcasters. In order to achieve this goal, it is necessary to promote competition and protect the viewer from monopoly power over the channels.

Presently, home shopping broadcast stations are at a commercial disadvantage to nonbroadcast services offering similar home shopping programming. The primary reason for this is the ownership or contractual interest many cable operators have in nonbroadcast home shopping programs. Basically, an ownership or a contractual interest entitles the cable operator to a percentage of the sales made on the nonbroadcast home shopping program. Because a home shopping broadcaster has public interest obligations to fulfill, there will normally be less time allocated to sales, and thus, less financial gain to the cable operators who carrying their programs. Although presently not all home shopping broadcast stations are meeting their public interest obligation, the proposed regulation which will enforce this will only increase the already existing commercial disadvantage. Additionally, the local broadcasters should not be forced to enter a contractual relationship with a cable operator in order to be allotted time on their channels. Allowing the cable operators to force the home shopping broadcast stations to enter a contractual or ownership arrangement with them has the affect of putting too much power in one set of hands. If home shopping formats will only receive time if they enter into a financial arrangement with the

effect wipes out effective competition. The programming decisions are based entirely on the cable operators financial gain, rather than on what is in the best interest of the cable viewer. This results in the cable operator having an almost monopolistic power over the cable viewer's access to programming.

The best way to solve the competitive problem is to implement "must-carry" rules. Must carry will force cable operators to present some local programming stations. Inevitably, therefore, some of the home shopping broadcast stations will be picked up by the cable operators. We would like to see the new rule go one step farther and require that any cable operator who has an ownership interest in a nonbroadcast home shopping program be required to give preference to the broadcast stations with home shopping formats when local stations outnumber the must-carry requirements for the cable operator. This will take away the operator's monopoly power, and force them to give the viewing public a chance to make their own choice over competing home shopping programs. This will also make up for the inherent commercial disadvantage the home shopping broadcast stations bear because of their public interest obligations. We would like to note that we believe this preference should only be given to stations that are fulfilling their public interest obligations as determined by the regional panels previously proposed, and ultimately by the Commission.

Cable operators have already voiced objections to "must-carry" rules on the grounds that they are not using the broadcast spectrum, and therefore, should not be subject to the broadcast



the home. The cable operator, therefore, should be held to some general standards. We believe the public wants and deserves a portion of their viewing to contain public affairs and interest topics. In most cases, local viewers subscribe to cable with the anticipation that they will have access through it to many local channels. Cable operators have an obligation to fulfill this expectation.

CONCLUSION

The Cable Act of 1992 mandates that either home shopping broadcast stations be determined to be presently operating in the public interest, or if not that they be forced to alter their programming to appropriately conform. The Act is clear on this issue, and allows no room for